

1989

# State of Utah v. Bruce William Mathews : Brief of Appellant

Utah Court of Appeals

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BRIEF

UTAH

DOCUMENT

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STATE OF UTAH,

DOCKET NO.

Plaintiff/Respondent,

v.

BRUCE WILLIAM MATHEWS,

Defendant/Appellant.

Case No. 890666-CA  
Priority No. 2

BRIEF OF APPELLANT

Interlocutory appeal from an order denying jurisdiction over a motion to quash the bindover order, in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Richard H. Moffat, Judge, presiding.

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IN THE UTAH COURT OF APPEALS

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STATE OF UTAH,

Plaintiff/Respondent,

v.

BRUCE WILLIAM MATHEWS,

Defendant/Appellant.

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Case No. 890666-CA

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BRIEF OF APPELLANT

Interlocutory appeal from an order denying jurisdiction over a motion to quash the bindover order, in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Richard H. Moffat, Judge, presiding.

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IN THE UTAH COURT OF APPEALS

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STATE OF UTAH,

Plaintiff/Respondent,

v.

BRUCE WILLIAM MATHEWS,

Defendant/Appellant.

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Case No. 890666-CA  
Priority No. 2

STATEMENT OF JURISDICTION

Jurisdiction is conferred on this Court by Utah Code Ann. section 78-2a-3(2)(e), which provides that this Court has jurisdiction over "interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony." Appellant is charged with multiple alternative counts of theft by deception and communications fraud, second and third degree felonies (R. 6-10). This Court granted Appellant's petition for interlocutory appeal on December 14, 1989 (R. 95).

STATEMENT OF ISSUE

1. Does the district court have jurisdiction to quash a magistrate's bindover order and dismiss the information?

STATUTES AND CONSTITUTIONAL PROVISIONS

Pertinent statutory and constitutional provisions are set forth in the body of this brief.

STATEMENT OF THE CASE

Appellant is charged with multiple alternative counts of communications fraud and theft by deception, in an amended

information signed on December 13, 1988 (R. 6-10). Preliminary hearing was held before Magistrate Dennis Fuchs on January 17, 1989 (R. 11-13). The Magistrate ordered Appellant bound over to district court on January 18, 1989 (R. 2).

On February 3, 1989, Appellant was arraigned before the Honorable Richard H. Moffat, of the Third District Court (R. 20). At the arraignment, Appellant entered a plea of not guilty (R. 20).

On October 6, 1989, Appellant submitted a motion to quash the bindover order and to dismiss the information based on the lack of evidence to establish probable cause (R. 65-66). At the hearing on this motion on October 13, 1989, defense counsel addressed the controversy over district court jurisdiction over such a motion, and the trial court indicated that until the issue was resolved by an appellate court, the trial court would maintain the position that it had no jurisdiction (T. 2-3; R. 74)(appendix 1). The State's only comment pertinent to the issue was an indication that this Court had already granted several interlocutory appeals on this issue (T. 3).

With the trial court's permission, Appellant petitioned for interlocutory appeal of the issue of the trial court's jurisdiction over a motion to quash the bindover order and dismiss the information, and this Court granted his petition on December 19, 1989 (R. 76-95).

#### STATEMENT OF FACTS

There are no facts pertinent to this appeal.

## SUMMARY OF ARGUMENT

District courts have plenary original jurisdiction, and separate statutory authorization (which may be construed as appellate jurisdiction) to dispose of motions to quash bindovers and dismiss informations.

This Court's appellate jurisdiction over the circuit courts should not be read as prohibiting the plenary original jurisdiction of the district courts, nor as preempting the appellate jurisdiction of the district courts over improper bindovers and informations unsupported by a proper showing of probable cause; in conducting preliminary examinations the magistrates do not invoke their jurisdiction as circuit courts.

District court disposition of motions to quash bindovers and dismiss informations may conserve judicial resources.

## ARGUMENT

### I.

THE DISTRICT COURTS HAVE  
JURISDICTION TO  
QUASH BINDOVERS FROM THE CIRCUIT COURTS.

#### A. THE DISTRICT COURTS HAVE UNLIMITED ORIGINAL JURISDICTION.

The original jurisdiction of district courts is described in the Utah Constitution in Article VIII section 5, which reads as follows:

The district court shall have original jurisdiction in all matters except as limited by this constitution or by statute, and power to issue all extraordinary writs. The district court shall have appellate jurisdiction as provided by statute. The jurisdiction of all other courts, both



original and appellate, shall be provided by statute. Except for matters filed originally with the supreme court, there shall be in all cases an appeal of right from the court of original jurisdiction to a court with appellate jurisdiction over the cause.

By statute, district courts have plenary original jurisdiction. Utah Code Ann. section 78-3-4 provides:

(1) The district court has original jurisdiction in all matters civil and criminal, not excepted in the Utah Constitution and not prohibited by law.

(2) The district court judges may issue all extraordinary writs and other writs necessary to carry into effect their orders, judgments, and decrees.

(3) Under the general supervision of the presiding officer of the Judicial Council, cases filed in the district court, which are also within the concurrent jurisdiction of the circuit court, may be transferred to the circuit court by the presiding judge of the district court in multiple judge districts, or the district court judge in single judge districts. The transfer of these cases may be made upon the court's own motion or upon the motion of either party for adjudication. When an order is made transferring a case, the court shall transmit the pleadings and papers to the circuit court to which the case is transferred. The circuit court has the same jurisdiction as if the case had been originally commenced in the circuit court and any appeals from final judgments shall be to the Court of Appeals.

(4) Appeals from the final orders, judgments, and decrees of the district court are under Sections 78-2-2 and 78-2a-3.

(5) The district court has jurisdiction to review agency adjudicative proceedings as set forth in Chapter 46b, Title 63, and shall comply with the requirements of that chapter, in its review of agency adjudicative proceedings.

Thus, both the Utah Constitution and the Utah Code grant plenary original jurisdiction in the district courts, which

jurisdiction cannot be limited without statutory or constitutional prohibition.

This Court's appellate jurisdiction over the circuit courts is not phrased in exclusive or prohibitory language,<sup>1</sup> and should not be read as a limitation on the plenary original jurisdiction of the district courts.\* Cf. State v. Schreuder, 712 P.2d 264, 267-268 (Utah 1985)(while statute describing procedure in certified cases appears to assume that jurisdiction over preliminary hearings in certified cases will be exercised by circuit courts, the statute is not explicit in excluding other courts from that jurisdiction and should not be read as prohibiting exercise of that original jurisdiction by district courts).

Because there is no statutory or constitutional

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1 Utah Code Ann. section 78-2a-3(2)(c) reads:

....

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

....

(d) appeals from the circuit courts, except those from the small claims department of a circuit court[.]

Utah Code Ann. section 78-4-11 provides:

Except as otherwise directed by section 78-2-2, appeals from final civil and criminal judgments of the circuit courts are to the Court of Appeals. The county attorney shall represent the interest of the state as public prosecutor in any criminal appeals from the circuit court. City attorneys shall represent the interests of municipalities in any appeals from circuit courts involving violations of municipal ordinances.

(emphasis added).

prohibition of district court disposition of motions to quash bindovers during the exercise of their original jurisdiction, the district court in the instant case erred in ruling that the court had no jurisdiction to rule on the merits of the motion to quash the bindover.

B. UTAH RULES OF CRIMINAL PROCEDURE 10 AND 12 CONTEMPLATE DISTRICT COURT DISPOSITION OF MOTIONS TO QUASH BINDOVERS AND DISMISS INFORMATIONS DURING THE COURT'S EXERCISE OF ORIGINAL JURISDICTION.

Utah Rule of Criminal Procedure 12(b)(1) provides, in part,

The following shall be raised at least five days prior to trial:

(1) defenses and objections based on defects in the indictment or information other than that it fails to show jurisdiction in the court or to charge an offense, which objection shall be noticed by the court at any time during the proceeding[.]

The fact that this provision encompasses motions to quash bindovers and dismiss informations based upon inadequate showings of probable cause is demonstrated by Rule of Criminal Procedure 7, which indicates that after a preliminary hearing, a magistrate either shall find that the probable cause showing is adequate and issue an order binding the defendant over to district court, or shall find that the probable cause showing is inadequate and dismiss the information.<sup>2</sup> Thus, it appears that a

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2 Utah Rule of Criminal Procedure 7 provides in part,

(8) (b) If from the evidence a magistrate finds probable cause to believe that the crime charged has been committed and that the

lack of probable cause to support the bindover order renders the information subject to attack under Rule 12, supra.<sup>3</sup> Cf. e.g. State v. Smith, 617 P.2d 232 (Ok1.Cr. 1980)(affirming district court's "order quashing the information" based on insufficient evidence presented at preliminary hearing).

Even if Rule 12 were not read as granting the district courts jurisdiction over motions to quash bindovers and dismiss informations, Rule 10 of the Utah Rules of Criminal Procedure contemplates that the district court dispose of all objections relating to the preliminary hearing during the exercise of the court's original jurisdiction. That rule states,

(a) Upon the return of an indictment or upon receipt of the records from the magistrate following a bindover, the defendant shall forthwith be arraigned in

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defendant has committed it, the magistrate shall order, in writing, that the defendant be bound over to answer in the district court. The findings of probable cause may be based on hearsay in whole or in part. Objections to evidence on the ground that it was acquired by unlawful means are not properly raised at the preliminary examination.

(c) If the magistrate does not find probable cause to believe that the crime charged has been committed or that the defendant committed it, the magistrate shall dismiss the information and discharge the defendant. The magistrate may enter findings of fact, conclusions of law, and an order of dismissal. The dismissal and discharge do not preclude the state from instituting a subsequent prosecution for the same offense.

3 Note that Appellant's motion in the district court sought not only quashal of the bindover order, but also dismissal of the information (R. 65-66).

the district court. Arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating to him the substance of the charge and calling on him to plead thereto. He shall be given a copy of the indictment or information before he is called upon to plead.

(b) If upon arraignment the defendant requests additional time in which to plead or otherwise respond, a reasonable time may be granted.

(c) Any defect or irregularity in or want or absence of any proceeding provided for by statute or these rules prior to arraignment shall be specifically and expressly objected to before a plea of guilty is entered or the same is waived.

(d) If defendant has been released on bail, or on his own recognizance, prior to arraignment and thereafter fails to appear for arraignment or trial when required to do so, a warrant of arrest may issue and bail may be forfeited.

(emphasis added).

Both Rule 10 and Rule 12 of the Utah Rules of Criminal Procedure evidence legislative intent for district court disposition of objections to inadequate showings of probable cause at preliminary hearings.

C. WHETHER CLASSIFIED AS ORIGINAL OR APPELLATE JURISDICTION, DISTRICT COURTS HAVE JURISDICTION TO QUASH BINDOVERS AND DISMISS INFORMATIONS.

While it appears that Rules 10 and 12 contemplate that district courts will dispose of motions to quash bindover orders and to dismiss informations during the exercise of their original jurisdiction, even if the disposition of such motions were considered an appellate function, district courts may perform the function.

The district court in the instant case apparently

viewed the disposition of motions to quash bindovers and dismiss informations as the exercise of appellate jurisdiction over circuit courts (T. 3, in appendix 1). This view is erroneous.

As noted supra, this Court is vested with appellate jurisdiction over the circuit courts. Utah Code Ann. section 78-2a-3(2)(d); 78-4-11. How then, can it be that the district court in this case might have exercised "appellate" jurisdiction over the bindover order and information?

As explained in Van Dam v. Morris, 571 P.2d 1325 (Utah 1977), in conducting a preliminary hearing, the circuit court is not acting as a circuit court, but is acting as a magistrate. In the Van Dam case, the court was discussing the impropriety of a city court dismissal of a class A Misdemeanor case under the statutory scheme operant at that time. The court explained,

A preliminary examination does not invoke the jurisdiction of the court. In such a proceeding, the action is not action by a judge of any court, but that of a magistrate, a distinct statutory office. Justices of the Supreme Court, district judges, city court judges, and justices of the peace, when sitting as magistrates having the jurisdiction and powers conferred by law upon magistrates and not those that pertain to their respective judicial offices.

Id. at 1327.

Regardless of which judge or justice sits as magistrate over a preliminary hearing, it appears that the district court is expected by the legislature to review the conduct and/or findings of the magistrate if faced with an objection. If this Court wishes to characterize such review as "appellate", then Utah

Rules of Criminal Procedure 10 and 12 provide the statutory authorization of district court exercise of this "appellate" jurisdiction.<sup>4</sup>

II.  
DISTRICT COURT DISPOSITION  
OF MOTIONS TO QUASH BINDOVER ORDERS  
AND DISMISS INFORMATIONS WOULD BE  
THE MOST PRUDENT REMEDY.

Utah Rule of Criminal Procedure 10 contemplates that objections to the preliminary examination be raised in district court prior to arraignment in cases involving a plea of guilty. Utah Rule of Criminal Procedure 12 contemplates that objections to the information be raised at least five days prior to trial. It appears that disposition of such motions in the district court might be more simple and quick than disposition of such motions in this Court's interlocutory appeal process.

In State v. Anderson, 612 P.2d 778 (Utah 1980), the court explained that the preliminary hearing serves two purposes: the ferreting out of groundless prosecutions, and the protection of the defendant's right to a fair trial (i.e. through serving as a discovery device). Id. at 783-784. Trial courts have traditionally been recognized as best equipped to evaluate fact intensive issues such as those raised in a motion to quash a bindover. Cf. State v. Archuletta, 501 P.2d 263, 264 (Utah 1972)(trial court is vested with duty to insure that trial is fair, is in a better position than appellate court to evaluate

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<sup>4</sup> Article VIII section 5 of the Utah Constitution indicates that the appellate jurisdiction of the district courts is "as provided by statute".

claims relating to fairness of trial).

While this Court is certainly equipped to review the propriety of a preliminary hearing, if this Court did not grant an interlocutory review of the preliminary hearing, or did not reverse an improper bindover order, a trial court might be forced to go through a costly moot trial (involving jurors, a judge, a clerk, a court reporter, a bailiff, a prosecutor, a defense attorney, witnesses, and transportation and security personnel). Our law has traditionally recognized that it is best to allow trial courts to review and dispose of errors at the earliest possible opportunity. See e.g., State v. Lesley, 672 P.2d 79, 82 (Utah 1983)("When defense counsel fails to call the trial judge's attention to any problems regarding the admissibility of evidence at the time it is offered, he or she deprives the trial court of an opportunity to avoid error in the trial which may have been created by an improper ruling on a pretrial motion based on inadequate information.").

Common sense and Utah Rules of Criminal Procedure 10 and 12 support this Court's determination that district courts have jurisdiction to quash defective bindover orders.

#### CONCLUSION

Appellant requests this Court to order the district court to evaluate Appellant's motion to quash the bindover order on the merits.

Respectfully submitted this 1st day of March, 1990.



Nancy Bergeson  
NANCY BERGESON  
Counsel for Appellant

Elizabeth Holbrook  
ELIZABETH HOLBROOK  
Counsel for Appellant

CERTIFICATE OF DELIVERY

I, Elizabeth Holbrook, hereby certify that 2 copies of the foregoing will be delivered to the Utah Court of Appeals and that four copies of the foregoing will be delivered to the Attorney General's Office, 236 State Capitol, Salt Lake City, Utah, 84114, this 1st day of March, 1990.

Elizabeth Holbrook  
ELIZABETH HOLBROOK

DELIVERED by \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 1990.

\_\_\_\_\_

## APPENDIX 1

1 THE COURT: Ok. I got your Request for Discovery,  
2 and Motion to Continue and your Motion to Quash the Bindover.

3 MS. BERGESON: Yes. I should indicate to the  
4 Court, that preliminarily, when I contacted your clerk this  
5 week, she indicated that the calendar was fairly heavy and  
6 these matters may need to be rescheduled, at least insofar  
7 as they contemplated the argument; and that undoubtedly will be  
8 the case with respect to the Motion to Quash the Bindover.

9 We do intend to submit to Your Honor, at least I  
10 have intended to submit either a memo or request oral  
11 argument on the factual basis for our Motion to Quash the  
12 Bindover. But I know that there has been some concern by  
13 the District Court and there are some variations within the  
14 Court about whether or not each Court respectively feels it  
15 has power to hear such a motion, jurisdictionally; and that  
16 there is some sentiment, that in fact, this Court does not  
17 have the power to sit as a second judgment, if you will, for  
18 the Circuit Court Judge.

19 THE COURT: Yeah. It puts this Court in the posi-  
20 tion of being an appellate court on the matters of bindovers  
21 and I just don't think that's the law.

22 MS. BERGESON: I don't know whether Your Honor had  
23 previously ruled on this jurisdictional issue.

24 THE COURT: Yeah, I have.

25 MS. BERGESON: Certainly that's the threshold

1                   issue that I would be dealing with;and so,  
2 if the Court is inclined to deny the motion based on juris-  
3 dictional grounds, it is our intention to take an Interlocu-  
4 tory Appeal on that jurisdictional issue.

5           THE COURT:       Well, I have no objection to you doing  
6 that. I think the issue needs to be resolved.

7           MR. MORGAN:       Several up there right now, Your  
8 Honor. This is not the test case.

9           THE COURT:       Well, I am aware of that;but until  
10 it's resolved, the position I have taken is the one I am  
11 going to stand by. I think any other resolution would be  
12 horribly burdensome, I think over the District Court and  
13 puts us in an appellate court position to the Circuit Court  
14 in matters that the statute doesn't say we're appellate on.  
15 It doesn't make any sense to me;that being the case, I would  
16 deny your Motion to Quash. I'll certify you up for appeal  
17 if you want to. I already sent them up a couple there so  
18 I don't know why yours' should be any different than theirs.

19           MS. BERGESON:     I'll file the appropriate paperwork  
20 then move to strike the trial date that's currently set for  
21 the end of this month. I had previously prepared a Motion  
22 to Continue, which I can submit to the Court, based upon the  
23 Motion to Quash the Bindover. Really, any resolution of that  
24 by this Court, whether it be substantive affirmance or denial  
25 or procedural, would still, I think vacate the trial date.

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Nov 14 10 40 AM '89

BY *Kati Goodrich*

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
STATE OF UTAH, SALT LAKE DEPARTMENT

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THE STATE OF UTAH,	:	ORDER
Plaintiff,	:	
v.	:	
BRUCE W. MATHEWS,	:	Case No. 891900094
Defendant.	:	HONORABLE RICHARD H. MOFFAT

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Based on defendant having heretofore filed a Motion to Quash the Bindover of the Circuit Court, and based on the State's objection to the same on jurisdictional grounds;

IT IS HEREBY ORDERED that this Court does not have jurisdiction to review the sufficiency of evidence presented at preliminary examination in Circuit Court to determine whether the Circuit Court was correct in binding the matter over to District Court; and it is further

ORDERED, that defendant's Motion to Quash the Bindover and to Dismiss be and it is hereby stricken and/or denied.

DATED this 27 day of October, 1989.

BY THE COURT:

  
HONORABLE RICHARD H. MOFFAT

DELIVERED a copy of the foregoing Order to the <sup>Box-Clerk's office</sup> office of  
the Salt Lake County Attorney, 231 East 400 South, Salt Lake City,  
Utah 84111, this 14 day of <sup>Nov</sup> October, 1989.

Murray Berg